

## REMARKS

### **(A) STATUS OF THE APPLICATION**

Applicants thank the Examiner for his clear explanation for the rejections in the Final Office Action dated August 25, 2006.

#### **(I) DISPOSITION OF CLAIMS**

- (i) Claims 26-28, 30-33, and 35-39 are pending in the application.
- (ii) Claims 26-28, 30-33, and 35-39 have been rejected under 35 U.S.C. § 103(a).
- (iii) Claim 1-25, 29, and 34 have been previously canceled.

#### **(II) APPLICANTS' ACTION**

- (i) Applicants respond to the rejection of Claims 26-28, 30-33 and 35-39.

### **(B) RESPONSE TO REJECTION UNDER 35 U.S.C. § 103(A)**

CLAIMS 26-28, 30-33, AND 35-39: PAT. APP. EP 0128046 TO EWAN, ET AL.

Claims 26-28, 30-33, and 35-39 are rejected under 35 U.S.C. 103 §(a) as being obvious over European Patent Application EP 128046, to Ewan, *et al.* (*hereinafter* "Ewan").

According to the Examiner, "[Ewan] discloses a process of making a reactor blend of homopolyethylene and ethylene copolymer (page 3, lines 10-29; page 4, line 27 through page 5, line 7)." Further, according to the Examiner "[Ewan] states that the copolymer comprises one or more olefin comonomers, and specifically names propylene, butene, hexene, and octene."

In response, while the Applicants agree that these specific olefins are named in Ewan, they disagree with the statement that "[Ewan] states that the copolymer comprises one or more olefin comonomers."

What the reference actually states is (starting at page 4, line 35) "... and with copolyethylene higher alpha-olefins having from about 3 to about 10 carbon atoms and preferably 4 to 8 carbon atoms. Illustrative of the higher alpha-olefins are propylene, butene-1, hexene-1 and octene-1. Preferably the alpha-olefin is

propylene or butene-1. In the process of the present invention, ethylene, together with the alpha-olefins, is polymerized in the presence ..." (**emphasis added**).

The only unambiguous reference as to whether one or more alpha-olefins may (should) be added is the word "or" which has been highlighted above. The phrase "together with the alpha-olefins" could be interpreted as:

- (1) ethylene together with the first alpha-olefin, or ethylene with the second alpha-olefin, or ethylene with the third alpha-olefin, and so on, as demonstrated by examples in Ewan;

OR

- (2) ethylene together with two or more alpha-olefins.

However, there is no clear exposition in the reference that a series of alpha-olefins should be used, much less a series of alpha-olefins wherein the olefins must have an even number of carbon atoms. When one looks at Examples 1(a), 1(b), 1(c), 2, and 3 in Ewan for guidance to understand the phrase "together with the alpha-olefins," it is clear that the phrase must mean "ethylene together with only one alpha-olefin" because Ewan uses only one alpha-olefin with ethylene. In fact, Ewan uses only propylene in all its examples. Applicants respectfully submit that Ewan therefore must be interpreted to mean one alpha-olefin, i.e., the interpretation in (1) above.

Applicants respectfully submit that Examiner's conclusion about obviousness is based on improper hindsight reasoning, i.e., the fact that the Examiner knew about the present invention could have made it seem obvious while reading the reference. However, a careful reading of the reference provides no incentive or clear suggestion that a series of alpha-olefins be used, much less a series of alpha-olefins containing an even number of carbon atoms, especially because Ewan's two preferred alpha-olefins are propylene and butene-1, and because Ewan uses only propylene in the examples. In fact, the Examiner states that "a working example within the scope of the claims is not included" in Ewan.

Also the Examiner states that a skilled artisan would be "motivated to make a blend comprising a copolymer including the claimed monomers because the

reference has specifically named these monomers and [because the reference] stated that the copolymers may comprise more than one olefin in addition to ethylene.”

Applicants respectfully derive from the above arguments by the Examiner that a “motivation to combine” Ewan with that of the knowledge of a skilled artisan would be expressly necessary if Ewan were to be used as a reference in the 35 U.S.C. § 103(a) capacity. However, as submitted *supra*, Applicants respectfully disagree with the interpretation that “copolymers [of Ewan] may comprise more than one olefin in addition to ethylene” for the reasons stated. If the first interpretation (*see supra*) is held as the interpretation of relevant portions of Ewan, an express “motivation to combine” Ewan with the knowledge of a skilled artisan to arrive at an “obviousness” conclusion under 35 U.S.C. § 103(a ) is negated.

**CONCLUSION**

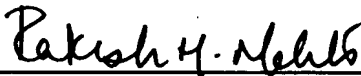
In view of the above remarks, Applicants respectfully submit that stated grounds of rejection have been properly traversed, accommodated, or rendered moot and that a complete response has been made to the Office Action mailed on August 25, 2006.

Therefore, Applicants believe that the application stands in condition for allowance with withdrawal of all grounds of rejection. A Notice of Allowance is respectfully solicited. If the Examiner has questions regarding the application or the contents of this response, the Examiner is invited to contact the undersigned at the number provided.

Should there be a fee due which is not accounted for, please charge such fee to Deposit Account No. 04-1928.

Respectfully Submitted,

Date: October 24, 2006

  
**RAKESH H. MEHTA, ESQUIRE**  
ATTORNEY FOR APPLICANTS  
REGISTRATION No.: 50,224

PHONE: 302-984-6089  
FAX: 302-658-1192